IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 136 OF 1998

1) Shri Farokh Behram Irani)
Age:46, Occ: Business.)
2) Shri Sharukh Behram Irani)
Age: 49, Occ: Business.)
3) Smt.Kharman Behram Irani)
Age:75, Occ: Business.)
Nos.1 to 3 residing at 5/4,)
Ardeshar Baug, Ma-Parviz)
Road, Pune - 411 002.)... Petitioners.

Versus

1) The State of Maharashtra)
through the Special Land)
Acquisition Officer No.15,)
Ghole Road, Opp.Government)
Technical School,Pune 411004.)
2) Pune Municipal Corporation)
through the Municipal)
Commissioner, having his)

Office at Shivaji Nagar,)
Pune 411 005.)... Respondents.

Mr. P. S. Dani for the Petitioners.
Mr. V.P.Malvankar, AGP for Respondent No.1.
Mr.R.G.Ketkar for Respondent No.2.

CORAM : A. P. SHAH and
S. U. KAMDAR, JJ.
DATED : 23RD SEPTEMBER, 2004.

ORAL JUDGMENT (Per A.P.Shah,J.) :

Heard Advocates.

2. The challenge is to the acquisition of the Petitioners' lands bearing C.T.S. Nos.1192 and 1193 situated at Village Yervada under the Land Acquisition Act, 1894, hereinafter for the brevity's sake referred to as "the Act". The notification under Section 4 of the Act was issued on 18th May, 1982 and the same was published in the Maharashtra Government Gazette on 3rd

June, 1982. The declaration under Section 6 of the Act was issued on 27th September, 1984 which was published in the Maharashtra Government Gazette on 8th November, 1984. The declaration was also published in local newspaper on 20th March, 1985 and 25th March, 1985. The Award was made on 24th March, 1987.

3. The land of the Petitioner is being acquired for widening of Pune Nagar Road. In the revised development plan Pune Nagar Road is shown having width of 150 ft. from Parnakuti Chowk to Gunjan Talkies and from Gunjan Talkies upto P.M.C. limits it is shown having width of 200 ft. Out of the Petitioners' properties C.T.S. No.1192 is marginally affected by 150 ft. D.P. Pune Nagar Road and C.T.S. No. 1193 is substantially affected by the regular line of the street prescribed by the Municipal Commissioner in exercise of his powers under Section 210 of the Bombay Provincial Municipal Corporations Act, 1949. The Petitioners are the heirs and legal representatives of one Behram Irani. The notice under Section 4(1) of the Act was issued in the name of Behram Irani. It appears that Behram Irani was not alive on the date of

issuance of the notice and the notice was received by the 1st Petitioner. Inspite of receipt of the notice, the 1st Petitioner did not participate in enquiry under Section 5A of the Act. He did not raise any objection to the acquisition proceedings including that the proceedings are initiated against the dead person. He also failed to intimate the Special Land Acquisition Officer about the death of Behram Irani. The Petitioners instituted a civil suit being Regular Civil Suit No. 860 of 1987 only on 27th April, 1987 though the declaration under Section 6 of the Act was issued on 27th September, 1984. The suit was withdrawn in 1998 and the present petition was filed.

4. Mr. Dani, learned Counsel appearing for the Petitioners raised three contentions before us. First, Mr. Dani contended that notice under Section 4(1) was issued in the name of the dead person and therefore entire proceedings were vitiated. However, Mr. Dani did not dispute that the notice was received by the 1st Petitioner. The 1st Petitioner failed to raise any objection to the acquisition proceedings. He also failed to intimate about the death of Behram

Irani to the authorities. He allowed the acquisition proceedings to be proceeded with and filed the suit only after the award was passed. In the circumstances, it is not open for the Petitioners to raise a plea that the notice was issued in the name of the dead person.

5. The second contention of Mr. Dani is that the Standing Committee of the Corporation has passed the resolution challenging the alignment of the regular line of the street. This contention is contrary to the record. In fact, the Additional Municipal Commissioner (General) gave a proposal for changing the alignment of the regular line of street. The said proposal was considered by the Standing Committee in its meeting held on 16th February, 2000 and the proposal was finally withdrawn.

6. The last contention of Mr. Dani is that on the same road land is given on lease to one Avinash Salve by the Corporation. This contention is also contrary to the record. In fact, the Municipal Corporation ordered cancellation of grant of land to the trust as

also cancellation of building plan. In any event, it is pointed out that the land given to Salve is not a part of 150 ft. D.P. Pune Nagar Road.

7. Mr. Ketkar for the Corporation pointed out that Writ Petition No. 1345 of 2000 by the adjoining landlord by name Nanakram Agarwal was dismissed by Division Bench and Special Leave Petition preferred against the said order was also dismissed. In the circumstances of the case and keeping in view the fact that the land is reserved for public amenity, we are not inclined to entertain this petition and grant any relief to the Petitioners. The land of the Petitioners was acquired after following the procedure under the Land Acquisition Act. The belated challenge to the acquisition proceedings cannot be accepted in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. Petition is, therefore, dismissed. No order as to costs.

Issuance of certified copy expedited.

(A. P. SHAH, J.)

(S. U. KAMDAR, J.)